

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-282

DALE J. LEIST,

Defendant.

ORDER

This matter is before me on the defendant's motion for a modification of his sentence. Defendant requests that the court order four months home confinement with the ability to leave for medical care and rehabilitation so that he can undergo a knee replacement procedure during the winter. He claims that he needs to be healthy in order to be able to do the spring farm work which is essential to his livelihood.

The government opposes the defendant's request, noting that it comes on the eve of the notification of his reporting date and that the medical records supplied by the defendant suggests only that a knee replacement is his preference at this time. The government also notes the fact that Leist contacted his doctor immediately after that notification but had not previously seen the doctor for knee problems since February 1, 2006. Finally, the government notes the similarity of this defendant's request to the request made by Gary Pansier, an individual known to Mr. Leist who is charged with essentially the same types of offenses. Given these facts, the government suggests that Mr. Leist is being manipulative and that his request for a sentence modification for medical purposes is contrived.

Having considered the arguments of the government and the entire file, I conclude that the defendant's request should be denied. I agree with the government that the timing of Mr. Leist's return to the doctor and his request appears more than coincidental. Moreover, the medical records, as described in the government's response, do not support his claim that this surgery is essential or even recommended by his physician. It is his preference, and there is no indication whether the preference is a reasonable one because of his medical condition or is simply an effort to avoid his prison sentence. While I took into consideration the defendant's occupation as a farmer in structuring the sentence in the first place, I am satisfied that to simply replace his prison with home confinement would depreciate the seriousness of the offense and fail to promote respect for the law. Finally, I note that the Bureau of Prisons is well able to handle any medical needs that Mr. Leist may have. For all of these reasons, the defendant's request for a sentence modification is denied.

SO ORDERED this 1st day of November, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge